APPENDIX E

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

THE PEOPLE, Plaintiff and Respondent, v. DON SOON PARK, Defendant and Appellant.	B085053 (Super. Ct. No. BA059736 c/w No. BA067141 COURT OF APPEAL-SECOND DIST. FILED SEP 20 1995 JOSEPH A. LANE CLERK

Appeal from a judgment of the Superior Court of Los Angeles County. James A. Bascue, Judge. Affirmed.

Kevin C. McLean, under appointment by the Court of Appeal, for Defendant and Appellant.

Daniel E. Lungren, Attorney General, George Williamson, Chief Assistant Attorney General, Carol

Wendelin Pollack, Senior Assistant Attorney General, John R. Gorey, Supervising Deputy Attorney General, and Carl N. Henry, Deputy Attorney General for Plaintiff and Respondent.

INTRODUCTION

Defendant, Don Soon Park, appeals from the judgment entered in consolidated case Nos. BA067141 and BA059736 following a jury trial which resulted in his convictions: for conspiracy to commit robbery (Pen. Code[1], §§ 182, subd.(a)(1), 211 (count 1)); conspiracy to commit burglary (§§ 182, subd.(a)(1), 459 (count 2)); first degree residential burglary (§ 459 (count 3)); attempted first degree residential burglary (§§ 211, 664 (count 4)); and terrorists threats. (§ 422 (count 5).) Further, the jury found to be true the special allegations he was a principal who was armed with a firearm in count 1 through 4. (§12022, subd.(a)(1).) Defendant contends the court prejudicially erred in consolidating, over his objection case Nos. BA067171 which charged counts 1 through 4 arising from a residential robbery and burglary and BA059736 which contained charges in counts 5 through 7 arising from: various threats against the person; threats directed at property; and a later store bombing. (§ 451, subd. (c).) We affirm.

FACTS

Viewed in accordance with the usual rules on appeal (*Jackson* v. *Virginia* (1979) 443 U.S. 307, 319; *Taylor* v. *Stainer* (9th Cir. 1994) 31 F.3d 907, 908-909; *People* v. *Bean* (1988) 46 Cal.3d 919, 932), the evidence concerning the residential burglary and robbery established that in

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1. Unless otherwise indicated, all future statutory references are to the Penal Code.

March and April 1991, defendant hired Mr. Nelson and Mr. Sander as security guards in one of his nightclubs. Munho Kim owed defendant money. Defendant told Mr. Nelson, the security guard, about a plan to: follow Mr. Kim home one night; restrain him with duct tape; threaten him with a gun; and rob him of the owed money. Defendant recruited Mr. Nelson and Mr. Sander to participate in a conspiracy to commit the robbery. Between May and August 1991, defendant, Mr. Nelson and Mr. Sander engaged in two aborted attempts to carry out their plans. On August 20, 1991, defendant, Mr. Nelson, and Mr. Sander arrived, as planned, near Mr. Kim's house at about midnight. Mr. Kim arrived at his home. Mr. Sander and Mr. Nelson followed Mr. Kim into the garage. Mr. Sander began hitting Mr. Kim. Mr. Kim's wife entered the garage and screamed. Mr. Sander and Mr. Nelson left. Defendant, who drove separately, escaped. The police stopped and arrested Mr. Nelson and Mr. Sander.

The evidence concerning the threats and bombing established defendant had known Mr. and Mrs. Soo Young Hong, their children, and Mr. Soo's mother for some time. Mr. Soo owed defendant money. Defendant was dating Mrs. Soo during her separation from Mr. Soo. Sometime prior to May 11, 1992, Mrs. Soo and defendant asked Mr. Nelson to kill Mr. Sool. Mr. Nelson refused. Defendant then told Mr. Nelson he was going to "blow up": Mr. Soo's house; Mr. Soo's mother's house; and Mr. Soo's store. Sometime before the store was bombed, Mr. Soo's mother and defendant had a disagreement over a remark. Defendant blamed Mr. Soo's mother for the remark and repeatedly demanded monetary compensation from her. A few days before the store bombing, defendant telephoned Mr. Soo's mother and told her if she did not pay he would: not leave her family alone; bomb her store; and kill her and her family. Mr. Soo's

mother took defendant's threats seriously and notified the police. On June 8, 1992, the store was blown up with galvanized pipe bomb. In defense, defendant presented character witnesses, including Mr. Soo's wife, who said he was not capable of committing any of the crimes.

On March 26, 1993, a four count information in case No. BA067141 was filed concerning the incident at Mr. Kim's house, charging defendant with: conspiracy to commit robbery (§§ 182, subd.(a)(1), 211); conspiracy to commit burglary (§§ 182, subd. (a)(1), 459); first degree residential burglary (§ 459); and attempted first degree residential burglary. (§§ 211, 664).) On July 28, 1993, an amended information in case No. BA059736 was filed concerning the: threats and store bombing charging defendant with making terrorist threats (§ 422); use of a destructive device and explosive to injure or destroy property (§ 12303.3); and arson of a structure. (§ 451, subd.(c).)

On April 8, 1993, the prosecutor filed a motion to consolidate case Nos. BA067141 and BA059736 because both cases charged assaultive behavior, the evidence was cross-admissible, and the consolidation would result in the efficient use of court time. Following a hearing, the court ordered the two cases consolidated. The court found: "the issues in case No. BA067141 [counts 5-7] are similar to the issues and charges in this action [counts 1-4 in case No. BA059736]. The Court hereby consolidates said cases over the defense objection. . . ."

DISCUSSION

Defendant's contention the court abused its discretion and caused prejudice by consolidating the cases is meritless. We apply the deferential abuse of discretion standard of review. (*People* v. *Mason* (1991) 52 Cal.3d

909, 933; *People* v. *Ruiz* (1988) 44 Cal.3d 589, 605.) Both informations charged assaultive crimes against person; e.g., conspiracy to commit robbery and terrorists threats.[2] (*People* v. *Melton* (1988) 44 Cal.3d 713, 767; *People* v. *Allen* (1995) 33 Cal.App.4th 1149, 1155-1156; *People* v. *Armstrong* (1992) 8 Cal.App.4th 1060, 1068-1069.) Since crimes involving assaultive behavior are of the same class, the cases here charging assaultive crimes were properly consolidated. (*People* v. *Rhoden* (1972) 6 Cal.3d 519, 524-

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2. Section 182, subdivision (a) states, in pertinent part: "If two or more persons conspire: [¶] (1) to commit any crime."

Section 211 states: "Robbery is the felonious taking of personal property in the possession of another, from his person or immediate presence, and against his will, accomplished by means of force or fear."

Section 422 states: "Any person who willfully threatens to commit a crime which will result in death or great bodily injury to another person, with specific intent that the statement is to be taken as a threat, even if there is no intent of actually carrying it out, which, on its face and under the circumstances in which it is made, is so unequivocal, unconditional, immediate, and specific as to convey to the person threatened, a gravity of purpose and an immediate prospect of execution of the threat, and thereby causes that person reasonably to be in sustained fear for his or her own safety or for his or her immediate family's safety, shall be punished by imprisonment in the county jail not to exceed one year, or by imprisonment in the state prison. [¶] For the purposes of this section, 'immediate family' mean any spouse, whether by marriage or not, parent, child, any person related by consanguinity or affinity within the second degree, or any other person who regularly resides in the household, or who, within the prior six months, regularly resided in the household."

525; *People* v. *Armstrong, supra,* 8 Cal.App.4th at pp. 1068-1069.) Additionally, even assuming the informations were improperly consolidated, defendant has failed to demonstrate prejudice. Neither case was more inflammatory than the others. The relative strength of each case did not significantly differ. Finally, each case for the most part rested on the credibility of independent witnesses, Mr. Nelson for the burglary and residential robbery and Mr. Soo's mother for the terrorists threats. (*People* v. *Shorts* (1963) 221 Cal.App.2d 732, 734-735.) Thus, the court did not abuse its discretion in consolidating the cases.

DISPOSITION

The judgment is affirmed.

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TURNER, P.J.

We concur:

GRIGNON, J.

GODOY PEREZ, J.